



March 2, 2001

SENATE BILL No. 358

DIGEST OF SB 358 (Updated March 1, 2001 1:32 PM - DI 51)

Citations Affected: IC 35-50; noncode.

Synopsis: Enhanced penalties for repeat offenders. Limits the types of felonies for which the state may seek to have a person sentenced as a habitual offender. Allows a habitual offender charge to be based on prior crimes even if the penalty for the crimes was enhanced under another law.

Effective: July 1, 2001.

Alexa, Bray

January 16, 2001, read first time and referred to Committee on Judiciary.
March 1, 2001, amended, reported favorably — Do Pass.

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SB 358—LS 6338/DI 103+



March 2, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 358

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-50-2-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) **Except as**
3 **otherwise provided in this section**, the state may seek to have a
4 person sentenced as a habitual offender for any felony by alleging, on
5 a page separate from the rest of the charging instrument, that the person
6 has accumulated two (2) prior unrelated felony convictions.
7 (b) ~~After a person has been convicted and sentenced for a felony~~
8 ~~committed after sentencing for a prior unrelated felony conviction; the~~
9 ~~person has accumulated two (2) prior unrelated felony convictions. The~~
10 ~~state may not seek to have a person sentenced as a habitual~~
11 ~~offender for a felony offense under this section if:~~
12 (1) the offense is a misdemeanor that is enhanced to a felony
13 in the same proceeding as the habitual offender proceeding
14 solely because the person had a prior unrelated conviction; or
15 (2) the offense is an offense under IC 9-30-10-16 or
16 IC 9-30-10-17.
17 (c) A person has accumulated two (2) prior unrelated felony

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convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

~~(d) However,~~ A conviction does not count for purposes of this subsection, **section as a prior unrelated felony conviction if:**

(1) ~~it the conviction~~ has been set aside; or

(2) ~~it the conviction~~ is one for which the person has been pardoned.

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

~~(e)~~ **(f)** If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

~~(d)~~ **(g)** A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

~~(e)~~ **(h)** The court shall sentence a person found to be a habitual ~~criminal~~ **offender** to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 2. [EFFECTIVE JULY 1, 2001] IC 35-50-2-8, as amended by this act, applies only if the offense for which the state seeks to have the person sentenced as a habitual offender was committed after June 30, 2001.



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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 358, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "chargeable as" and insert "**enhanced to**".

Page 1, line 12, after "felony" insert "**in the same proceeding as the habitual offender proceeding**".

Page 1, line 13, after ";" insert "**or**".

Page 1, line 15, delete "; or" and insert ".".

Page 1, delete lines 16 through 17.

Page 2, line 11, reset in roman "or".

Page 2, line 13, delete "; or" and insert ".".

Page 2, delete lines 14 through 25, begin a new paragraph and insert:

"(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender."

and when so amended that said bill do pass.

(Reference is to SB 358 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

